

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
International Comparison and Consumer)	GN Docket No. 09-47
Survey Requirements in the Broadband)	
Data Improvement Act)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Deployment of Advanced)	GN Docket No. 09-137
Telecommunications Capability to All)	
Americans in a Reasonable and Timely)	
Fashion and Possible Steps to Accelerate)	
Such Deployment Pursuant to Section 706)	
of the Telecommunications Act)	

To: Secretary, Federal Communications Commission
Attention: The Commission:

Comments - Public Notice #26
Data Sought on Uses of Spectrum

Introduction:

THIS TV Network, an advertiser supported 24/7 digital programming network offering free diverse content for digital broadcasters, files these comments in response to the Commission's question regarding broadcasting and public interest.

C. Broadcasting and the Public Interest

Broadcasters have historically played an important role in advancing public interests through free over-the-air broadcast TV. What are the benefits of free, over-the-air television broadcasting, in particular with respect to public awareness of emergency information, local news, political discourse, and education?

THIS TV Network is a digital programming innovation launched in September 2008 by Metro-Goldwyn-Mayer Studios (MGM) in conjunction with Weigel Broadcasting. The

free programming made available by THIS TV to local digital broadcasters throughout the United States is derived from MGM's film library – one of the world's largest – consisting of 4,100 theatrical films and 10,000 hours of television programming. While only in operation for just over a year, THIS TV currently covers 70% of the United States.

Response to Question C:

The three bedrock public interest goals of the FCC's regulation of the broadcast industry are: to promote diversity, localism and competition amongst licensees who provide free over-the-air broadcasting for the American public. Consistent with the mandate of the Telecommunications Act of 1996, the FCC is required to award broadcast licenses to those entities that serve the public interest.¹ Moreover, court decisions have consistently held the FCC accountable for promoting these goals.²

Today millions of Americans rely exclusively on free over-the-air broadcasting for entertainment and critical news and related information. For these Americans, and

¹ 47 U.S.C. § 307.

² See Fox Television Stations, Inc. v. Federal Communications Commission, 280 F.3d 1027, 1042 (D.C. Cir. 2002) ("In the context of the regulation of broadcasting, 'the public interest' has historically embraced diversity (as well as localism), see FCC V. Nat. Citizens Comm. For Broad., 436 U.S. 775, 795 (1978), and nothing in § 202(h) signals a departure from the historical scope."); see also Turner Broadcasting System, Inc. v. Federal Communications Commission, 520 U.S. 180, 189-190 (1997) ("As noted in Turner, must carry was designed to serve 'three interrelated interests; (1) preserving the benefits of free, over-the-air local broadcast television, (2) promoting the widespread dissemination of information from a multiplicity of sources, and (3) promoting fair competition in the market for television programming.' 512 U.S. at 662. We decided then, and now affirm, that each of those is an important governmental interest. We have been most explicit in holding that 'protecting noncable households from loss of regular television broadcasting service due to competition from cable systems' is an important federal interest'."; see also generally Schurz Communications, Inc. v. Federal Communications Commission, 982 F.2d 1043 (7th Cir. 1992).

those viewers who watch free over-the-air television even if they have access to cable or satellite services, the continued economic health of this nation's digital broadcasters is essential to the public interest. Broadcasters' financial health, particularly during these troubled economic times, requires regulatory certainty for broadcasters (as well as for programmers providing content for digital broadcasters) who have, in many cases, recently completed their costly transition from analog to digital spectrum.

As the new era of digital broadcasting begins, broadcasters need access to diverse programming for sub-channels that are byproducts of the DTV transition. To meet this need, THIS TV created a network model that advances the Commission's three public interest goals for broadcasters: diversity, localism and competition.

THIS TV is addressing the Commission's diversity goals by making available free access to programming contained in MGM Studios' huge library. Importantly, in providing its advertiser supported 24/7 turnkey programming network, THIS TV rejects infomercial programming and brings television viewers a free panoply of films and television programs that otherwise would not be available to viewers who have no access to pay cable or satellite services.

In addition to programming available from MGM Studios' vast library, THIS TV also provides free quality children television programming to local digital broadcasters. THIS TV children's programming is provided to digital broadcasters in quantities that far

exceed the FCC's requirement for broadcasters to air three hours a week of kidvid educational programming.

The Commission's localism goals are also advanced by THIS TV's flexible preemption guidelines. Unlike the rigid preemption guidelines traditionally mandated by national broadcast networks, THIS TV actually encourages its digital broadcast subscribers to air local news, public affairs, local sporting events and other locally focused programming, including coverage of local emergencies. As such, THIS TV represents an important role model for other programmers who seek to meet digital broadcasters' need for additional content, while still allowing those broadcasters to respond to the Commission's goals for localism in the digital broadcasting era.

In regard to the Commission's goal of increased competition, THIS TV's model could be a catalyst for other digital content providers who, like THIS TV, determine to take advantage of the marketplace-driven opportunity to address the expanded programming needs of digital broadcasters.

Recommendation for the FCC

As the Commission develops the much needed National Broadband Plan that will ensure that all Americans, regardless of income and ethnicity, have affordable access to broadband in the near future, the Commission must be vigilant to protect and nurture free over-the-air digital broadcasters who only recently have undergone the enormous cost of the DTV transition during one of the United States most challenging economic

times. In this regard, the Commission must explicitly confirm that broadcasters will not be at risk due to regulatory uncertainty as the FCC develops and implements a balanced National Broadband Plan.

Regulatory uncertainty will not only adversely impact the financial viability of digital broadcasters, it will undercut the growth of innovative programming services such as THIS TV. For THIS TV and other digital content providers, the uncertain and troublesome regulatory future advocated by some proponents of digital spectrum reclamation, will only serve to stunt the development of diverse digital programming and the localism it provides viewers of free over-the-air television.



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December 22, 2009